IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1951 OF 1994

Shri Manchar Shankar Pandit ... Petitioner

V/s.

Secretary, Ratnagiri Education Society & Ors. ... Respondents

Ms.Kumud Bhatia for Petitioner
Mr.Neel Helekar for Respondent No.1
Mr.Sunil Dighe for Respondent No.3

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **JULY 22, 2005**

ORAL JUDGMENT:

. The Petition is directed against the order of the School Tribunal dated 15.2.1993. The contention raised is that the Tribunal has without going into the merits of the case rejected the appeal in view of the fact that the Education Officer had decided the seniority list between the Petitioner and Respondent No.3.

2. Ms.Bhatia, appearing for the petitioner, submits that in view of the judgment of the Division Bench in the case of *Umesh Balkrishna Vispute v/s. State of Maharshtra*, **2001 (1) Mh.L.J. 486,** the Tribunal deciding an appeal under section 9(1) of the Maharashtra

Employees of Private Schools Act can decide ancillary questions including the disputes relating to supersession and seniority lists. The Division Bench has observed thus:

> 21. We, after having heard the parties at length and after having considered the aforesaid judgments, are of the considered view that finalisation of the seniority list in terms of rule 12 of the Rules is not final and conclusive and not binding on the tribunal and section 9(1) of the Act has overriding effect as it opens with non obstante clause and the dispute relating to seniority list can also be considered by the Tribunal as an incidental question while deciding the controversy in regards to the supersession. The dispute relating to supersession in the matter of promotion squarely lies within the jurisdiction of the tribunal. The view taken by the learned single Judge of this Corut in Burondi K. Lodghar vs. Vilasrao M. Desai, (supra) cannot be said to be a good law. We, therefore, have no difficulty in upholding the jurisdiction of the tribunal to go into the question of seniority of the teachers. The tribunal can also go into the question of supersession by the management while making promotion.

3. In view of these observations, the Tribunal was clearly in error in rejecting the appeal. The finding that the Education Officer having decided the inter se dispute between the Petitioner and Respondent No.3 could not have been questioned in an appeal preferred under section 9 of the MEPS Act is contrary to the provisions of law.

4. Although it is true that both the Petitioner and Respondent No.3 have retired, the appeal will have to be remanded for consideration since pay fixation and pensionary benefits of these two employees would depend on the result of the appeal.

5. In these circumstances, the matter is remanded to the Tribunal and the Tribunal shall decide the matter within three months from the receipt of copy of this order.

6. Writ Petition is disposed off accordingly. No order as to costs.